



POLICE DEPARTMENT

October 7, 2019

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In the Matter of the Charges and Specifications : Case No.
- against - : 2018-18951
Police Officer Angela Polancobrito :
Tax Registry No. 939240 :
34 Precinct :
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Jeannie Elie, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:
HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Angela Polancobrito, on or about September 12, 2017, at approximately 5:00 p.m., while assigned to 034 PCT and on duty, in the vicinity of 34th Precinct stationhouse, New York County, was discourteous, in that she stated, "you guys have a child, both of you do. Excuse me! Don't talk, I am talking. You both have a child, both of you should be concerning about, better than being fucking each other and bothering each other. Enough is enough" to Person A without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT - GENERAL

2. Police Officer Angela Polancobrito, on or about September 12, 2017, at approximately 5:00 p.m., while assigned to 034 PCT and on duty, in the vicinity of 34th Precinct stationhouse, New York County, was discourteous, in that she stated, "you guys have a child, both of you do. Excuse me! Don't talk, I am talking. You both have a child, both of you should be concerning about, better than being fucking each other and bothering each other. Enough is enough" to Person B without sufficient legal authority,

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT - GENERAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on September 12, 2019. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department did not call any witnesses, but introduced a videotaped recording of the incident, and the hearsay statement of Person A. Respondent introduced the hearsay statement of Person B, and testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After considering the evidence, I find Respondent guilty, and recommend that she forfeit three vacation days.

ANALYSIS

At about 1700 hours on September 12, 2017, Person A and Person B, who have a child in common, made arrangements to exchange custody of the child at the 34th Precinct in Manhattan. Person A had [REDACTED] drop off the child while he waited a short

distance away, since Person B had an order of protection against him. After the child was given to the mother, Person A realized he had left a bag of his own clothing in the child's stroller, and he approached Person B outside the stationhouse to try to retrieve it. The matter moved inside, as they entered the precinct. Respondent, a domestic violence officer who was just arriving to begin her shift and was not yet in uniform, followed them inside and spoke with them near the front rail. During their conversation, it is undisputed that Respondent stated to them, "You guys have a child, both of you do. Excuse me. Don't talk, I am talking. You both have a child, both of you should be concerning about, better than being fucking each other and bothering each other. Enough is enough."

A video recording of the interaction between Respondent and the parents, made by Person A's sister, was admitted into evidence (CCRB Ex. 2). In that recording, the exchange between the parties can be seen and heard. As the parents quibble about the bag of clothes, Respondent voices her displeasure at their ongoing fighting. At about the 1:40 mark, Respondent points her finger at them and makes the above-referenced statement. Respondent then turns away and the recording ends.

Neither Person A nor Person B appeared to testify; Person A did not respond to requests from the CCRB, and Person B stated that she had a positive relationship with Respondent and did not wish to come testify at her trial. A copy of Person A's recorded interview on October 11, 2017, and the accompanying transcript, were admitted into evidence (CCRB Ex. 1, 1A). Respondent offered into evidence Person B's interview from December 4, 2017, and the accompanying transcript (Resp. Ex. A, A1).

In his statement, Person A claimed that "it was kind of embarrassing" when Respondent made the comments to them inside the stationhouse. He interpreted her remark about "fucking

each other" to mean that that it was a mistake for them to have had a child, that he and Person B "had no business fucking each other." (CCRB Ex. 1A at 5-6, 22)

In her interview, Person B initially did not recall Respondent making the statement in question or using any profanity during their interaction inside the precinct. Person B stated that Respondent always treated her in a "very professional" manner. Even after viewing the video recording, Person B maintained that she did not remember Respondent saying that. (Resp. Ex. A 1 at 19-20, 29-30)

Respondent testified that as she entered the stationhouse, she heard Person B state that Person A was violating the order of protection. Respondent was familiar with them from prior problems involving their child. As Respondent tried to speak to them, Person A interrupted her and was uncooperative and rude. She testified that Person A was "overtalking," that he spoke over her when she was trying to say something. (Tr. 28-30, 50, 59-60)

Respondent acknowledged that she made the statement in question. She explained that she is naturally a loud talker, and that as a native-born Spanish speaker she sometimes has difficulty expressing herself in English. Respondent insisted that her intention was not to curse at them; rather, she was trying to get the parents to be concerned for their child's well-being, to help them "put their heads where they need to be." According to Respondent, when she used the expression "fucking each other" she meant to encourage them to stop bothering each other. (Tr. 30-32, 36, 46, 52-54, 56, 58)

Since Person A had violated the order of protection, and had three open complaints against him, Respondent detained Person A and waited for [REDACTED] detectives to come pick him up. (Tr. 34, 39)

Specifications 1 and 2 allege that Respondent's comments, particularly her use of the word "fucking," was discourteous to Person A and Person B, respectively. Since there is no

dispute that Respondent made the comments in question, the issue is whether, under the circumstances, those statements were discourteous. I find that they were.

Counsel for Respondent argues that coarse language is not, in itself, discourteous. Respondent's use of the word "fucking" in this context was not intended as a curse word. Rather, Respondent meant to convey to the parents that they should stop bothering each other and focus more attention on the well-being of their child.

On the one hand, this tribunal credits Respondent's testimony regarding her intentions during the encounter. Respondent testified in a straight-forward, candid manner that she was trying to urge Person A and Person B to make their child more of a priority. Having listened carefully to Respondent's testimony, in conjunction with the video footage, I am not persuaded that Respondent's comments were intended to degrade the parents.

Nevertheless, even with good intentions, Respondent had the responsibility to act with decorum in her interaction with Person A and Person B. This she failed to do. In an open area of the precinct, Respondent raised her voice and used inappropriate language in addressing the parents. Even if there was no indication that Person B was offended by the comments, under these particular circumstances the manner in which Respondent addressed Person A and Person B, including her gratuitous use of the word "fucking," was unprofessional.

This tribunal is mindful that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct. This, however, was not one of those cases, and I find Respondent guilty of Specifications 1 and 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined.

See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 11, 2005. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. In 2014, Respondent forfeited 32 days previously served on suspension, 20 vacation days, and was placed on one-year dismissal probation for two separate cases, one involving Respondent's making harassing phone calls, and the other for her alleged excessive use of force and failure to fully cooperate with the CCRB.

The CCRB asks that Respondent forfeit ten (10) vacation days. In support of that recommendation, counsel for the CCRB cites *Disciplinary Case No. 2017-17005* (Mar. 27, 2018), where a respondent forfeited 15 vacation days; however, in that case, the respondent also struck the victim with a gun and kicked him. The CCRB also cites *Disciplinary Case No. 2014-11416* (Sept. 10, 2015), where a respondent forfeited eight vacation days; however, there, the respondent degraded a prisoner by comparing her to a dog and saying that he owned her.

Here, in contrast, Respondent's remarks were not designed to demean the two civilians at the precinct. Rather, as discussed above, Respondent was voicing her concern that the parents should be prioritizing the well-being of their child instead of engaging in petty squabbles like the one they were having over the bag of clothing. To be sure, Respondent voiced that concern in an unprofessional manner by using the word "fucking," and her vulgarity needs to be addressed. But to penalize her 10 vacation days for this misconduct would be excessive. Respondent has earned six medals for Excellent Police Duty. It is noteworthy that even the female complainant, Person B, stated in her interview that Respondent was always professional in their dealings.

In light of Respondent's disciplinary history, some loss of vacation days is warranted. It is important that Respondent understand that she needs to be more responsible in her interactions with the public, particularly in her choice of words, which, if not chosen carefully, could readily escalate a situation. Respondent, a domestic violence officer, has an obligation to communicate with a greater degree of sensitivity and respect. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit three (3) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

NOV 20 2019

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANGELA POLANCOBRITO
TAX REGISTRY NO. 939240
DISCIPLINARY CASE NO. 2018-18951

Respondent was appointed to the Department on July 11, 2005. On her last three annual performance evaluations, she received 4.5 overall ratings of "Extremely Competent/Highly Competent" for 2015 and 2016 and a 4.0 overall rating of "Highly Competent" in 2014. She has received six medals for Excellent Police Duty.

In 2014, Respondent forfeited 32 pre-trial suspension days without pay and 20 vacation days, and was placed on one-year dismissal probation in connection with two separate matters: in *Disciplinary Case No. 2011-6287*, Respondent was accused of using excessive force and failing to fully cooperate with the CCRB; in *Disciplinary Case No. 2013-8889*, Respondent was guilty of making harassing phone calls.

For your consideration.

A handwritten signature in black ink, appearing to read "Jeff S. Adler".

Jeff S. Adler
Assistant Deputy Commissioner Trials